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CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NIKOLAY BARKHATOV,

Petitioner,

vs.

ROSEMARY MELVILLE, District Director,  
U.S. Citizenship and Immigration Services;  
San Francisco District;

EMILIO T. GONZALEZ, Director, U.S.,  
Citizenship and Immigration Services;

MICHAEL CHERTOFF, U.S. Secretary of  
Homeland Security, and

ROBERT S. MUELLER, III, Director, Federal  
Bureau of Investigation;

Respondents.

Case No. 007-03172

C.I.S. File No. A075 727 611

**PETITION FOR HEARING ON  
NATURALIZATION PURSUANT TO 8  
U.S.C. § 1447(b) AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**IMMIGRATION MATTER  
C.I.S. FILE No. A 076 963 421**

**EDL  
ADR**

**PETITION FOR HEARING ON NATURALIZATION PURSUANT TO 8 U.S.C. §  
1447(b) AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**PETITION FOR HEARING ON NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(b)  
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1**

1           1. Petitioner Nikolay Barkhatov respectfully submits this petition for de novo  
2 determination by this Court of his Application for Naturalization, pursuant to 8 U.S.C. § 1447(b)  
3 and requests that the Court grant a hearing on his pending Application for Naturalization and  
4 grant the Application for Naturalization.

5           2. Mr. Barkhatov submitted his Application for Naturalization on December 8, 2005, and  
6 successfully completed his naturalization interview and examination on April 10, 2006.  
7 Nonetheless, Respondents, the Director and San Francisco District Director of the Citizenship  
8 and Immigration Services ("CIS") and the Secretary of Homeland Security, have failed to make  
9 any determination on Mr. Barkhatov's Application for Naturalization.

10           3. Under 8 U.S.C. § 1447(b), an applicant for naturalization may petition a United States  
11 District Court for a hearing on his application if the government fails to make a determination  
12 within 120 days of the naturalization interview. The District Court may grant naturalization  
13 pursuant to the statute.<sup>1</sup>

14           4. Because Respondents have failed to adjudicate Mr. Barkhatov's Application for  
15 Naturalization for over a year since his interview and examination – well beyond the 120-day  
16 statutory period prescribed in 8 U.S.C. § 1447(b) – and because Mr. Barkhatov meets all  
17 statutory criteria for naturalization, this Court should hold a hearing on the Application and grant  
18 it.

### 19                                   **JURISDICTION AND VENUE**

20           5. This court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. §  
21 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications), 28 U.S.C. §  
22 1331, (federal question), 28 U.S.C. § 1361 (mandamus) and 28 U.S.C. §§ 2201 and 2202  
23 (declaratory relief).

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24           <sup>1</sup> Section 1447(b) provides, in its entirety: "If there is a failure to make a determination under section 1446  
25 [government naturalization] of this title before the end of the 120-day period after the date on which the examination  
26 is conducted under such section, the applicant may apply to the United States district court for the district in which  
27 the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either  
28 determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter."

1           6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e). Mr. Barkhatov sues  
2 the Respondents in their official capacities as officers and employees of the United States. A  
3 substantial portion of the events giving rise to this Petition occurred in San Francisco, California,  
4 where Mr. Barkhatov's Application for Naturalization has been and is pending before the San  
5 Francisco office of the CIS. In addition, venue is proper in this District pursuant to 8 U.S.C. §§  
6 1447(b) which provides that a petition for de novo review of a naturalization application shall be  
7 filed in the district in which the applicant resides. Mr. Barkhatov resides in San Mateo,  
8 California, in San Mateo County.

#### INTRADISTRICT ASSIGNMENT

11           7. The events giving rise to this claim have occurred in the county of San Mateo, and the  
12 Petitioner's residence is within the county of San Mateo.

#### PARTIES

15           8. Petitioner is a citizen of Russia and a lawful permanent resident of the United States.  
16 Mr. Barkhatov resides in San Mateo, California, within the jurisdiction of this Court.

17           9. The Respondent Rosemary Melville is the District Director for the San Francisco  
18 District of the Citizenship and Immigration Service ("CIS"), U.S. Department of Homeland  
19 Security. Ms. Melville is responsible for applications for naturalization pending in the San  
20 Francisco District and in its San Jose sub-office. Ms. Melville is sued in her official capacity.

21           10. The Respondent Emilio T. Gonzalez is the Director of the CIS. Mr. Gonzalez is  
22 responsible for the processing and determination of applications for naturalization submitted to  
23 the CIS. Mr. Gonzalez is sued in his official capacity

24           11. The Respondent Michael Chertoff is the U.S. Secretary of Homeland Security, which  
25 encompasses the CIS. Mr. Chertoff is ultimately responsible for the administration of all  
26 immigration and naturalization laws, including the processing and determination of applications  
27 for naturalization. Mr. Chertoff is sued in his official capacity.





1 18. On September 15, 2006, the CIS issued a nationwide "News Release", entitled  
2 "USCIS Announces Elimination of Naturalization Application Backlog". (A copy is attached as  
3 Exhibit F.)

4 19. To date, the CIS has failed to make any determination on Mr. Barkhatov's  
5 Application for Naturalization, despite the passage of over a year since his April 10, 2006,  
6 naturalization examination and interview, and despite his having taken every possible action at  
7 his disposal to request that they comply with their responsibility to act. The Respondents' delay  
8 is unreasonable and violates the Respondents' statutory and regulatory duties. See 8 C.F.R. §  
9 335.3(a) ("A decision to grant or deny the application [naturalization] shall be made at the time  
10 of the initial examination or within 120 days after the date of the initial examination of the  
11 application for naturalization under § 335.2"); Administrative Procedure Act, 5 U.S.C. §  
12 555(b) ("With due regard for the convenience and necessity of the parties or their representatives  
13 and within a reasonable time, each agency shall proceed to conclude a matter presented to it.")

14 20. Mr. Barkhatov meets all statutory requirements for naturalization. First, for the five  
15 year period preceding the date of filing his naturalization application, Mr. Barkhatov has resided  
16 continuously within the United States as a lawfully admitted permanent resident. He has resided  
17 in San Mateo, CA., within the jurisdiction of the San Francisco CIS office, for more than the  
18 required three months. See 8 U.S.C. § 1427(a)(1). Second, from the date of filing his  
19 naturalization application in 2005 to date, Mr. Barkhatov has maintained continuous residence in  
20 the United States. See 8 U.S.C. § 1427(a)(2)(b). Third, Mr. Barkhatov is a person of good moral  
21 character. See 8 U.S.C. § 1427 (a)(3). Finally, Mr. Barkhatov has met the civics and English  
22 language requirements by passing the test administered by the CIS, as prescribed by 8 U.S.C. §  
23 1423.

24 21. Mr. Barkhatov has suffered and continues to suffer prejudice from Respondents'  
25 undue and unreasonable delay in processing his naturalization application. Upon naturalization,  
26 Mr. Barkhatov will be entitled to a U.S. passport, enabling him to take needed business trips,  
27 and will be entitled to vote in the United States.

28 /

1 **CAUSE OF ACTION**

2 **COUNT ONE**

3 **RIGHT TO DE NOVO JUDICIAL DETERMINATION**  
4 **OF APPLICATION FOR NATURALIZATION**

5 **8 U.S.C. § 555(B)**

6  
7 22. The allegations set forth in paragraphs 1 through 21 above are repeated and  
8 incorporated as though fully set forth herein.

9 23. Because Respondents have failed to adjudicate Mr. Barkhatov's naturalization  
10 application within 120 days after the date of his naturalization examination, he is entitled to de  
11 novo adjudication of his naturalization application by this Court under 8 U.S.C. § 1447(b).

12  
13 24. This Court should grant Mr. Barkhatov's naturalization application pursuant to 8  
14 U.S.C. § 1447(b), because he meets all of the requirements for naturalization under chapter 2 of  
15 the Immigration and Nationality Act, 8 U.S.C. § 1421 et seq., and therefore has a right to become  
16 a naturalized citizen of the United States.

17  
18 **COUNT TWO**

19 **MANDAMUS – REQUEST FOR COMPLETION OF BACKGROUND CHECKS**

20 **5 U.S.C. § 1447(B)**

21 25. Count two is brought against Respondent Mueller in his official capacity as Director  
22 of the FBI, as the person who is ultimately responsible for completing the cackground check in  
23 Mr. Barkhatov's case.

24  
25 26. Respondent Mueller, per 5 U.S.C. 555(b), owes a duty to Mr. Barkhatov to conclude  
26 such background check within a reasonable time. Completing the background check is a  
27 ministerial act that does not involve the exercise of discretion. The Congress, through 8 U.S.C. §  
28 1447(b), has set a reasonable time for such act to be no more than 120 days after the

**PETITION FOR HEARING ON NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(b)**

**AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 6**

1 naturalization

interview.

2 27. Respondent Mueller, per 5 U.S.C. 555(b), is violating his duty to Mr. Barkhatov to  
3 conclude such background check within a reasonable time and failing to communicate the results  
4 of such background checks to the CIS.  
5

6  
7 **PRAYER FOR RELIEF**

8 Petitioner respectfully requests the following relief:

- 9  
10 (a) That this Court (1) enter an order granting Petitioner's naturalization application pursuant  
11 to 8 U.S.C. § 1447(b); (2) administer the oath of naturalization to Petitioner; and (3) enter  
12 an order enjoining Respondents to take all necessary administrative action to effectuate  
13 the Court's order of naturalization, including but not limited to issuance of appropriate  
14 documents in proof of U.S. citizenship;  
15  
16 (b) In the alternative to the relief requested in paragraph (a) above, that this Court issue an  
17 order directing Respondents to adjudicate Petitioner's naturalization application and issue  
18 an appealable administrative decision within 14 days of the Court's order.  
19  
20 (c) That this Court issue an order declaring that Respondents' delay in performing the  
21 background checks and adjudicating Petitioner's Application for Naturalization has been  
22 unreasonable and in violation of Respondents' obligations, and order that such acts be  
23 completed immediately.  
24  
25 (d) That this Court award Petitioner reasonable attorney's fees under the Equal Access to  
26 Justice Act; and  
27  
28 (e) That this Court award such other relief at law and in equity as justice may require.

1  
2  
3 Dated: June 15, 2009  
4  
5  
6

7 Respectfully submitted,  
8  
9

10 By: Robert Baizer  
11

12 Robert Baizer  
13 483 Ninth St., Ste. 200  
14 Oakland, CA 94607  
15 Attorney for Petitioner  
16  
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Fingerprint Notification			NOTICE DATE January 03, 2006
CASE TYPE N400 Application For Naturalization			INS A# A 075 727 611
APPLICATION NUMBER WSC*001420437	RECEIVED DATE December 08, 2005	PRIORITY DATE December 08, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS NIKOLAY BARKHATOV 342 HIGHLAND AVE 202 SAN MATEO CA 94401			
BIOMETRICS PROCESSING STAMP ASC SITE CODE: <u>X+R</u> BIOMETRICS QA REVIEW BY: <u>[Signature]</u> ON <u>TENPRINTS QA REVIEW BY: JAN 17 2006</u> ON <u>[Signature]</u>			
To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.			
APPLICATION SUPPORT CENTER INS SAN FRANCISCO 250 BROADWAY STREET SAN FRANCISCO CA 94111		DATE AND TIME OF APPOINTMENT 01/17/2006 12:00 PM	
WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING: 1. THIS APPOINTMENT NOTICE and 2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.			
PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.			
REQUEST FOR RESCHEDULING Please reschedule my appointment for the next available: <input type="checkbox"/> Wednesday afternoon <input type="checkbox"/> Saturday afternoon INS cannot guarantee the day preferred, but will do so to the extent possible. Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to: INS SAN FRANCISCO 250 BROADWAY STREET SAN FRANCISCO CA 94111 If you have any questions regarding this notice, please call 1-800-375-5283.			
APPLICATION NUMBER WSC*001420437		APPLICANT COPY 	
WARNING! Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.			

EXHIBIT B

U.S. Department of Justice  
Immigration and Naturalization Service

## Naturalization Interview Results

**APR 10 2006**

A#: A 075 727 611

On \_\_\_\_\_, you were interviewed by INS officer **JOSEPH NAGLE**.

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak / \_\_\_\_\_ read / \_\_\_\_\_ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☐ INS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability / \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

**A) \_\_\_\_\_ Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

**B) \_\_\_\_\_ A decision cannot yet be made on your application.**

**PENDING FOR  
SECURITY CHECKS**

**It is very important that you:**

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

N-652 (Rev. 12/7/99) Y

**EXHIBIT**

C.

BARBARA BOXER  
CALIFORNIA

COMMITTEES:  
COMMERCE, SCIENCE,  
AND TRANSPORTATION  
ENVIRONMENT  
AND PUBLIC WORKS  
FOREIGN RELATIONS

## United States Senate

HART SENATE OFFICE BUILDING  
SUITE 112

WASHINGTON, DC 20510-0505

(202) 224-3553

<http://boxer.senate.gov/contact>

September 15, 2006

Nikolay Barkhatov  
342 Highland Ave, Apartment 202  
San Mateo, California 94401

Dear Friend:

Thank you for your recent correspondence to Senator Boxer regarding the FBI National Name Check Program. It is my understanding that you have a pending application with the U.S. Citizenship and Immigration Services.

After contacting the Federal Bureau of Investigation, it is my understanding that your FBI name check is still pending. Due to the sensitive nature of these clearances, U.S. security will not be compromised and there are no expedites, substitute procedures, or information being released to third parties, including Congressional offices.

The time needed for adjudication will continue to be difficult to predict, as necessary new procedures are refined. If you wish to check on the status of your FBI Name Check, you may e-mail: [FBINNCP@ic.fbi.gov](mailto:FBINNCP@ic.fbi.gov) Your note should include the following information:

- Your Complete Name
- Date of Birth
- Alien Registration Number on your Alien Card
- Your email address

Thank you for writing to Senator Boxer. I regret that we are unable to be of more assistance regarding this matter.

Sincerely,

Maria Jimena Acuña  
Constituent Representative

Enclosure

1700 MONTGOMERY STREET  
SUITE 240  
SAN FRANCISCO, CA 94111  
(415) 403-0100

312 NORTH SPRING STREET  
SUITE 1748  
LOS ANGELES, CA 90012  
(213) 894-5000

501 'I' STREET  
SUITE 7-600  
SACRAMENTO, CA 95814  
(916) 448-2787

1130 'O' STREET  
SUITE 2450  
FRESNO, CA 93721  
(559) 497-5109

600 'B' STREET  
SUITE 2240  
SAN DIEGO, CA 92101  
(619) 239-3884

201 NORTH 'E' STREET  
SUITE 210  
SAN BERNARDINO, CA 92401  
(909) 888-8525

**EXHIBIT**

PRINTED ON RECYCLED PAPER





U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 15, 2006

MS NIKOLAY BARKHATOV  
APARTMENT 202  
342 HIGHLAND AVENUE  
SAN MATEO, CA 94401

Request No.: 1065208- 000  
Subject: BARKHATOV, NIKOLAY

Dear Requester:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure

**EXHIBIT**

E.



U.S. Citizenship  
and Immigration  
Services



USCIS  
Backlog  
Elimination  
Plan

September 15, 2006

# News Release

## **USCIS Announces Elimination of Naturalization Application Backlog** *Making a difference, one case at a time*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) today announced the elimination of the backlog for the N-400 Naturalization Application. Having completed some 342,290 backlogged cases, USCIS average processing times for the N-400 fell from a previous high of 14 months in February 2004, to approximately 5 months today.

Overall, the gross backlog of all applications has decreased from a high of 3.8 million in 2004 to just over 1.1 million in July 2006. Of this gross backlog of 1.1 million, 140,000 cases are considered backlogged and under USCIS control as of July 2006. Cases considered to be **within** USCIS control are defined as those which are ready to be adjudicated. Cases **outside** our control, and therefore, not counted in the net backlog include: cases that are pending law enforcement security checks, naturalization test retakes, naturalization candidates awaiting scheduling of a judicial ceremony and cases in which an applicant has failed to respond to a request for additional evidence needed to complete the adjudication.

While the average processing time for most applications is less than six months, we recognize that some cases remain pending beyond our six month standard. We remain committed to continue to concentrate our efforts on those cases that are outside target cycle times.

These positive efforts are reflected in the naturalization of a record 28,000 new Americans during this year's Citizenship Day and Constitution Week ceremonies and represent ongoing USCIS efforts to meet President Bush's mandate to process most applications within an average of six months of filing by October 1, 2006.

"Our work takes on significance beyond other government benefits. What we do is more than just numbers, applications and forms. The services we provide profoundly affect people's lives," said USCIS Director Emilio Gonzalez. "By eliminating the Naturalization backlog, we provide those who aspire to become Americans with an invaluable opportunity to contribute back to our Nation."

The men and women of USCIS process record numbers of cases each month without compromising national security. Everyday, USCIS completes more than 135,000 security and background checks. Each of the 28,000 new citizens naturalized this week will have undergone this mandatory screening, and USCIS has expanded the range of applicants required to submit fingerprints and other biometrics to reduce immigration and identity fraud.

– USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services (USCIS) became one of three former INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.

EXHIBIT F.